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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,625	01/10/2005	Masayuki Kamite	264121US3PCT	5601
22850 7590 04/10/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER LEYSON, JOSEPH S	
			ART UNIT 1722	PAPER NUMBER
			NOTIFICATION DATE 04/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/520,625	Applicant(s) KAMITE, MASAYUKI	
	Examiner Joseph Leyson	Art Unit 1722	

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 26 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): all rejections of claims 10, 12 and 13.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 11, 14 and 15.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

1. The proposed amendments to the specification and to the drawing overcome the objections thereto
2. The proposed amendments to the claims overcome the objections thereto.
3. The request for reconsideration has been considered but is not found persuasive.

Applicant argues that the '301 patent does not disclose a third crushing device to further crush the crushed wood waste material crushed by the second crushing device, to produce fine chips; a grinding device to grind the fine chips into a fine powder; and a blending mixer to mix the fine powder of the wood waste material and the crushed resin waste material to produce a mixed material. Rather, the '301 patent discloses a manufacturing method of a simulated wood product, in which, by means of pulverizing recycled wooden members and recycled resinous members after they have been mixed, a mixing process and the pulverizing process can be incorporated into one line, reducing space as well as work in a plant, and improving production efficiency (col. 2, lines 56-63). The '301 patent does not disclose a blending mixer to mix the fine powder of the wood waste material and the crushed resin waste material to produce a mixed material, wherein a grinding device grinds the fine chips into a fine powder prior to mixing by a blending mixer. The examiner respectfully disagrees. Note that the claims do NOT negate mixing of the recycled wooden members and recycled resinous members before the pulverizing process. The '301 patent discloses mixing prior to the pulverizing process and mixing (kneading) AFTER the pulverizing process (i.e., fig. 1). Therefore, the '301 patent DOES disclose a third crushing device to further crush the crushed wood waste material (and the resin material) (i.e., col. 8, lines 17-32) crushed

Art Unit: 1722

by the second crushing device (i.e., col. 8, lines 1-16) to produce fine chips, a grinding device to grind the fine chips into a fine powder (i.e., col. 8, lines 33-56), and a blending mixer (i.e., col. 8, lines 63-67) to mix the fine powder of the wood waste material and the crushed resin waste material by KNEADING to produce a mixed material, wherein the grinding device grinds the fine chips into a fine powder prior to mixing by the blending mixer. Note that, in the '301 patent, the first crushing device to crush resin and the second crushing device to crush wood are the same apparatus which crushes both wood and resin, and the instant claims do NOT require that the first crushing device be separate from the second crushing device. Furthermore, the '301 discloses that it is well known in the art that the wood and resin can be pulverized in separate lines (i.e., col. 1, line 27, to col. 2, line 2; col. 3, lines 16-22; fig. 2). Separate lines would clearly provide first, second and third crushing devices which correspond to the limitations of the instant claims.

Applicant argues that, in the outstanding Office Action, the stated motivation for combining the teachings of the '958, '595, and '301 patents is "to enable the wood waste material to be pulverized in a three-step process which effectively pulverizes the wood waste material from lumps to fine powdery particles, as disclosed by the '301 patent. However, Applicants respectfully submit that the '301 patent specifically discloses that a mixing process is performed before a third crushing device and a grinding device are used. The '301 patent does not disclose that mixing occurs after a third crushing device and grinding device process the wood waste material crushed by the second crushing device. Thus, the outstanding Office Action has relied only on

Art Unit: 1722

Applicant's disclosure for motivation to combine the references and has pointed to nothing in the references themselves or anywhere in the references indicating a motivation to combine the '958, '595, and '301 patent in a manner such that the invention of independent Claim 11 would be the result. The examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the references themselves. The '301 patent clearly discloses multiple step pulverizing (second and third crushing, then grinding, as mentioned above) to obtain smaller and smaller wood particles until a wood powder is produced. Thus, motivation to use multiple step pulverizing is clearly disclosed by the '301 patent because use thereof produces wood POWDER. Furthermore, the '301 patent discloses that product mixtures including wood POWDER enable a simulated wood product to be made having patterns of natural wood grains on the surface thereof and having superior quality with respect to water resistance (i.e., col. 5, lines 29-53).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (571) 272-5061. The examiner can normally be reached on M-F 9AM-5:30PM.

Art Unit: 1722

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JL


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300-1700

4/4/07